was forcefully expressed in another part of the judgment of the Court (at page 153) in these words:

"Surely this case reflects the dilatory nature of judicial proceedings held under procedural rules adopted in an adversary system in which the court is expected to stand aloof like the Greek God, Zeus, who sitting on the height of Mount Olympus, and only peering down from that summit upon the doings and misdoings of his subjects below will not act unless moved by them. If accumulation of cases is regarded as valid criticisms and an anathema against the administration of justice in this country, and we heard these criticisms repeated time and time again not only by judges and lawyers but also by laymen such as politicians and businessmen and other concerned citizens, surely one of the key solutions to this problem is to give power to the court to intervene in appropriate cases, when situations call for intervention without having to wait to be moved by the parties. The court should be more active than it has been hitherto. Although the rules laid down elaborate time table for the parties to follow but if the plaintiff does not adhere to it and the defendant is shy or on account of respect for the plaintiff or for any other reason is reluctant to take up the step provided by the rules, the suit is simply pushed into further slumber, and perhaps into deep coma from which it could never regain consciousness and yet for statistical purposes it adds to the backlog of cases giving the court a bad name as being an indolent lot. Public interest therefore demands that the court should have the power to wake such sleeping cases and deal with them appropriately according to justice."

Counsel for the appellants urged this Court to follow the decision of the Federal Court in *Toh Hock Thye's* case as the same policy considerations apply to Singapore. We have deliberated on this decision but it is with some regret that in this particular aspect of the law, we are of the view that the courts in Singapore, unlike the courts in Malaysia, do not have the benefit of a statutory rule which can be construed to express a policy consideration to permit the Courts in Singapore to initiate the steps to strike out actions for want of prosecution or to depart from the principle applied in *Birkett* v. *James*[1] that the power to dismiss an action for want of prosecution, other than in a case of contumelious conduct, should not normally be exercised within the currency of the limitation period. The principle thus formulated requires the courts to strike a balance between the desirability of penalising the plaintiffs (by dismissing his action with costs) and the need to protect the defendant from further or aggravated prejudice in the plaintiff being able to commence proceedings afresh on the same cause of action. Therefore, unless compelled by a clear and unambiguous statutory rule which requires the courts in Singapore to give a greater weight to punishing the plaintiff than to protecting the interest of the defendant, the submission of counsel for the appellants, if accepted on the ground advanced by him, would, in our view, amount to an unwarranted extension of the principle in *Birkett* v. *James*. Save for this submission, counsel made no attempt to argue that there were exceptional circumstances in this action which would take it out of the general principle.

We accordingly dismissed this appeal with costs at the conclusion of the hearing before us.

Appeal dismissed.

Solicitors: *Lim Ganesh & Liu; Drew & Napier.*

WEE MING CHOO v. WONG YIP CHONG

[A.C.J. (Chan Sek Keong J.C.) March 30, 1987]

[Singapore – Suit No. 2265 of 1986]

Vendor and Purchaser – Conditional contract – Sale subject to satisfactory replies to legal requisitions – Retaining wall not approved by competent authority – Subsequent approval of retaining wall – Vendor re-selling property after 21 days' notice – Damages – Duty to mitigate – Law Society's Conditions of Sale 1981, condition 29(4).

Contract – Option to purchase property free from encumbrances – Sale subject to satisfactory replies to requisitions – Delay in completion – Claim for loss against purchaser – Law Society's Conditions of Sale 1981.

Conveyancing – Rights and duties of vendor when reselling property to third party.

In June 1984 the plaintiff entered into a contract to sell a property to the defendant at the price of $850,000.00. The sale was subject to (a) the purchaser's solicitors receiving satisfactory replies to their legal requisitions to the Government Departments, and (b) the Law Society's Conditions of Sale 1981. Completion of the sale was to take place on October 10, 1984. However on August 20, 1984, the defendant's solicitors wrote to the plaintiff's solicitors about certain aspects of the replies to their legal requisitions which were unsatisfactory. This concerned a retaining wall at the rear of the property. Then followed prolonged negotiations. Finally on February 6, 1985, the plaintiff's solicitors issued a notice requiring the defendant to complete within 21 days of the notice. The defendant failed to complete whereupon the plaintiff resold the property after expiry of the notice to another purchaser for $550,000.00.

On March 11, 1986, the plaintiff commenced an action for the difference in purchase price, agent's commission and solicitors' costs. Judgment was given for the plaintiff for damages to be assessed and costs. The defendant appealed.

Held, dismissing the appeal: (1) the evidence showed a legal requisition which, even if it had been unsatisfactory, had been rendered satisfactory on January 30, 1985, by the Competent Authority. Consequently the court was satisfied that the legal requisition was satisfactory.

(2) a vendor's obligation in a situation like this where he desires to re-sell the property is to do so within a reasonable time. What is reasonable time depends on the circumstances of each case which will include the state of the property market then prevailing for that type of property. The vendor has a duty to mitigate damages but he has no obligation to nurse the property for the benefit of the defaulting purchaser;

(3) damages to be assessed by the Registrar.

Case referred to:

(1) *Keck* v. *Faber, Jellett and Keeble* (1915) 60 Sol. J. 253.

APPEAL FROM REGISTRAR'S DECISION.

Fong Chee Yang for the appellant/defendant.
Ms. Leong Kwok Yan for the respondent/plaintiff.

Cur. Adv. Vult.

Chan Sek Keong J.C.: In June 1984, the plaintiff granted an Option to the defendant to purchase a property known as 27 Jalan Merlimau, Singapore, free from encumbrances at the price of $850,000 subject to, *inter alia,* satisfactory replies to the usual requisitions from the relevant authorities and in the event of such requisitions being unsatisfactory, the defendant was entitled to annul the sale. The Option also provided for completion not later than three months from the date of signing of this contract (*i.e.* upon the exercise of the Option). The sale was also subject to the Law Society's Conditions of Sale 1981.

The relevant events that followed were as follows:

(1) The defendant exercised the Option on July 4, 1984, and duly paid the 10% deposit of $85,000. Completion was therefore due on October 10, 1984. However, on August 20, 1984, the defendant's solicitors wrote to the plaintiff's solicitors about certain aspects of the replies to the requisition which were unsatisfactory. That aspect which is relevant and which gives rise to this action concerned a retaining wall which had been erected at the rear of the property without the approval of the relevant authority. The defendant's solicitors proposed that they retain a sum of $20,000 as expenses to be incurred for the demolition of the retaining wall and restoration of the area affected.

(2) In reply, the plaintiff's solicitors on August 29, 1984, rejected the proposal and stated that the wall was more than 20 years old and that if demolition were required, the plaintiff would demolish the wall herself.

(3) On September 5, 1984, the defendant's solicitors replied and suggested that the plaintiff should submit proper plans to the Building Control Branch (BCD) for approval of the retaining wall.

(4) On September 25, 1984, the solicitors for the proposed mortgagees wrote to the defendant's solicitors that their clients required the retaining wall to be either regularised or demolished before completion but on October 3, 1984, the defendant's solicitors informed the defendant that there was a possibility of the proposed mortgagees agreeing to release the loan on completion of the mortgage documents and upon (1) the undertaking of the defendant to submit formal plans [for the wall] to BCD for approval and/or (2) such approval being granted. The solicitors also suggested that if the mortgagees adopted condition (2), the defendant would have to release his own money of $200,000 first and obtain release of the loan when approval for the wall was granted.

(5) On September 28, 1984, the defendant wrote a letter to Mrs. Lucy Yeo, the daughter-in-law of the plaintiff, to seek her help in resolving the dispute. In that letter, the defendant referred to the character of the house being changed if the wall were demolished and a new wall erected at an approved 60° angle and his concern that the authorities would take action to remove the wall after he had bought the property.

(6) On October 3, 1984, the defendant's solicitors informed the mortgagees' solicitors that the issue of the retaining wall had not been settled and that in all probability the defendant would regularise the retaining wall after completion and would take steps to submit plans for approval; the letter ended by asking whether the mortgagees were prepared to disburse the loan of $200,000 on the said terms.

(7) On October 6, 1984, the plaintiff's solicitors issued the standard 21 days' notice to the defendant's solicitors for completion within

that period, failing which the plaintiff would forfeit the 10% deposit, resell the property and claim any loss arising from the re-sale.

(8) On October 10, 1984, the defendant received an opinion from a professional engineer that because of the height of the wall (3.66 m) and the slope of the embankment (2 vertical against 1 horizontal, *i.e.* 2:1), any prolonged removal of the existing retaining wall would cause a hazard as each embankment would become unstable and render it liable to collapse. The engineer estimated the cost of replacing the wall to be approximately $35,000.

(9) On October 18, 1984, the defendant's solicitors wrote to the plaintiff's solicitors on the 21 days' notice, and after reciting the previous events, reiterated that the reply from BCD was unsatisfactory, that the 21 days' notice was unreasonable, if not meaningless, and that the defendant was willing able and ready to complete the purchase upon satisfactory reply from BCD. The letter then referred to the engineer's opinion on the risks of demolishing the wall, claimed interest on the 10% deposit until an authorised wall was erected (and alternatively a sum of $35,000 be deducted for that purpose) and warning the plaintiff that the defendant would annul the sale if they did not hear from the plaintiff's solicitors within 7 days thereof.

(10) On October 22, 1984, the plaintiff's solicitors replied to the letter of October 18, 1984, that the unauthorised retaining wall could be regularised by the submission of plans by a professional engineer, that $5,000 was sufficient for the purpose, that they had agreed to the defendant's solicitors retaining $5,000, that it was absurd to tear down the wall and rebuild it at $35,000. The plaintiff's solicitors also proposed as an alternative that they retained $20,000 from the proceeds of sale as stakeholders pending the decision of BCD on what was required to regularise the wall and the plaintiff's compliance with such requirements.

(11) On November 1, 1984, the defendant's solicitors replied and rejected the plaintiff's proposals regarding the retention of the $5,000 and the $20,000 and maintained that it was all along the plaintiff's duty "to rectify the illegal status of the wall including, *inter alia*, ascertaining from BCD that regularisation was a possibility." The letter concluded by asserting that the claim of the plaintiff's solicitors that the 21 days' notice had expired was arbitrary as the parties were still in negotiation.

(12) On November 21, 1984, the defendant's solicitors informed the plaintiff's solicitors that the defendant had communicated with an engineer and one Terence Kho from BCD.

(13) On November 21, 1984, the defendant wrote to Terence Kho of BCD to confirm their meeting of November 15, 1984, and the requirements of BCD for the regularisation of the wall.

(14) On January 7, 1985, Terence Kho replied to the defendant's letter of November 21, 1984, and advised them that as the retaining wall had already been constructed and therefore the dimensions of the foundation could not be ascertained, the defendant should consult a professional engineer to certify that the wall as constructed was structurally sound.

(15) On January 15, 1985, the defendant's solicitors wrote to the plaintiff's solicitors expressing their client's pleasure that the plaintiff had agreed to submit plans to regularise the retaining wall. The letter also proposed the following things to be done:

"1. Submission of plans by an engineer provided by us. on behalf of your client.

2. Rebuilding or rectifying the wall by a competent contractor according to Building Control Division's directions.

3. Vendor shall bear the costs of the Engineer, all fees required for the purchase and/or submission of the plans and fees for certifying that the wall is structurally sound and satisfactory to Building Control Division.

4. Certification by an engineer that the wall as constructed is structurally sound and satisfactory to Building Control Division.

5. Completion of sale within seven (7) days upon receipt of a fresh satisfactory reply of the legal requisitions from Building Control Division.

6. Interest at 10% p.a. on the sum of $850,000-00 from October 5, 1984, until completion.

Alternatively, if your client is not agreeable to the above, then our client shall annul the sale under Clause 3 of the Option and your client return the sum of $85,000-00 being

deposit as soon as possible. Kindly let us have your client's reply as soon as possible."

(16) On January 24, 1985, the defendant's solicitors wrote to the Deputy Director, Development and Building Control Division (DBCD), as follows:

"We enclose herewith photocopies of a reply to our legal requisition and a letter from M/s Leong Kwok Yan for your attention. The contents therein are self-explanatory.

It would appear that the owner of No. 27 Jalan Merlimau has submitted plans to regularise the unauthorised retaining wall.

We would appreciate it if you could confirm your approval of the plans and if so, we would be grateful if you could also let us know whether the unauthorised retaining wall has to be rebuilt or modified accordingly."

(17) On February 12, 1985, the Deputy Director replied as follows:

"We refer to your letter dated 30.1.85.

Please be informed that approval was granted to retain the existing rubble retaining wall. No further work need be carried out to the wall."

(18) On March 11, 1985, the plaintiff's solicitors sent another 21 days' notice to the defendant's solicitors in terms similar to that of October 6, 1984.

(19) On March 12, 1985, the defendant's solicitors replied that their requisition from BCD was unsatisfactory, that they had submitted a fresh requisition to BCD and that until a reply was received, the 21 days' notice was invalid.

(19A) On April 1, 1985, the defendant's solicitors wrote to the plaintiff's solicitors that no excavation had been done to determine the measurements of the wall and raised the question of the adequacies of the height of the wall for the first 1/6 of the length from the border of No. 29.

(20) On April 4, 1985, the defendant wrote to the Professional Engineer's Board (PEB) in which he set out the history of how the wall came to be regularised and sought PEB's opinion on how the professional engineer, one Tom Seah could have certified the wall to have been proper as there had been no excavation. Photographs and plans were enclosed in this letter.

(21) On April 24, 1985, PEB replied that unless and until evidence of negligence was available to demonstrate professional negligence, it would not be appropriate for PEB to intervene.

(22) Not satisfied with the reply, the defendant wrote to the Board on May 2, 1985, for their comments.

(23) Instead of replying, the Board referred the matter to the Deputy Director, DBCD to reply.

(24) On August 13, 1985, the plaintiff's solicitors informed the defendant's solicitors that they had found a buyer for the property at $600,000 and that the plaintiff would sell the property and recover the loss from the defendant.

(25) On August 14, 1985, the defendant's solicitors wrote to the plaintiff's solicitors as follows:

"Further to our telephone conversation between Mr. Leong/ Mr. Fong, we are instructed to inform you that our client shall purchase the above property at the price of $850,000/- as stipulated in Option.

We are further instructed that our client would like to complete the Sale within twenty-one (21) days from the date of our letter.

As you are aware, our client is attending Court on the 'St. Andrew's Murder Case' and he would require 21 days to raise the balance of the purchase price."

(26) On August 14, 1985, the defendant's solicitors wrote another letter to the plaintiff's solicitors as follows:

"Reference is made to your letter of 13 August 1985.

We are instructed to inform you that our client shall purchase your client's property as per our letter of 14 August 1985.

We are further instructed that if your client persists in selling her property at $600,000-00 to a third party, our client shall not pay your client for the loss incurred from the sale of the property to a third party."

(27) On August 17, 1985, the defendant's solicitors wrote again to the plaintiff's solicitors as follows:

"Reference is made to your letter of 15 August 1985.

We are instructed to accept paragraph 2(1) and (2) pend-

ing a reply from the Permanent Secretary on the legality of the status of the wall."

(28) On August 19, 1985, the plaintiff's solicitors wrote to the defendant's solicitors as follows:

"We thank you for your letter of 17th August but we think your client is wasting everybody's time."

(29) On September 10, 1985, the plaintiff's solicitors informed the defendant's solicitors that the plaintiff had resold the property at $600,000 and stated that the claim would be quantified upon completion of the said sale.

(30) On February 12, 1986, the plaintiff's solicitors wrote to the defendant's solicitors that the property was resold at $550,000 and claimed a loss of $228,062.50 as follows:

Difference in price:	$300,000.00
Agent's commission on resale:	11,000.00
Legal Costs on resale:	2,062.50
	$313,062.50
Less 10% deposit:	85,000.00
	$228,062.50

(31) On March 11, 1986, the plaintiff commenced this action and on April 15, 1986, applied for summary judgment. The application was heard on September 8, 1986, when judgment was given for the plaintiff for damages to be assessed and costs.

(32) On June 6, 1986, one Ho Cheok Sun of DBCD appeared to have replied to the defendant refusing to disclose the reasons how the PEB could have come to the conclusion that "it had no reason to be dissatisfied with the methodology and calculations used by the professional engineer." This letter has not been disclosed in these proceedings but part of the contents is set out in the defendant's letter dated August 1, 1986, to the Minister for National Development in which he questioned the propriety of an "illegal" wall being "legalised" by an arrangement whereby the PEB found "nothing wrong with the registered professional engineer because BCD has accepted the submission [and] the BCD finds nothing wrong with the submission because it has been submitted by a professional engineer registered with the PEB." The defendant requested the Minister to look into the matter.

(33) The defendant appealed against this judgment and I heard the appeal on February 24, 1987, and dismissed it with costs.

The grounds of appeal of the defendant were as follows:

(a) the notice dated March 11, 1985, was unreasonable and invalid because the defendant was still seeking clarification on the status or safety of the retaining wall from DBCD, that a reasonable notice was 3 to 6 months.

(b) the plaintiff was estopped in selling the property at $550,000 when she had earlier informed the defendant that she found a buyer for $600,000.

(c) the plaintiff did not act in good faith or exercise reasonable care in that she failed to (i) obtain a valuation report; (ii) sell the property by auction; (iii) offer it to the defendant; or (iv) wait for 1 year to lapse.

(d) the defendant was not in breach of the sale agreement because (i) he had at all times assured the plaintiff that he would buy the property; (ii) the retaining wall had not been reconstructed according to the plan submitted.

I sympathised with the plight of the defendant, however he got himself into such a situation. He might have (but I am not saying he could have) successfully annulled the sale but he did not. It is clear from the evidence that up to February 12, 1985 (Paragraph (7)), he was in two minds as to whether he should proceed to complete the purchase and the basis on which he should proceed. It would appear that he wanted the house but initially also wanted the retaining wall to be approved by the competent authority before he would complete the purchase. That explained why he sought the advice of DBCD and was told what he had to do. When the professional engineer (who was engaged with his approval) certified the plan as required by DBCD as a result of which DBCD approved the plan and the retaining wall as constructed, he sought to query the competency of the professional engineer and his methodology and also the existing practice of DBCD in approving the plan based on its certification by a professional engineer. In other words, after the plan

had been approved, the defendant shifted his ground of complaint from the element of authorisation of the wall to the element of its safety. Whether or not the safety of the retaining wall (as distinct from the safety of the house itself) was a sufficient reason for refusing to proceed with the completion of the purchase of the property was not argued before me and therefore I did not consider it. Similarly, whether or not the practice of DBCD in approving the said plan in respect of the unauthorised retaining wall was improper, *ultra vires* the powers of DBCD or otherwise invalid was raised by me but not argued as a ground for saying that the requisition was unsatisfactory and I also did not consider it. The evidence before me showed a requisition which, even if it had been unsatisfactory (as to which I expressed no opinion), had been rendered satisfactory on January 30, 1985, by the competent authority. This sole issue was whether the requisition was satisfactory and I was satisfied that it was satisfactory in the sense that the wall was an approved wall.

In my view, none of the arguments put forward by the defendant's counsel has any substance so far as concerns this appeal. Condition 29(4) of the Singapore Law Society's Conditions of Sale 1981 provides as follows:

"(4) If the Purchaser does not comply with the terms of an effective notice served by the Vendor under this condition, then –

(b) Without prejudice to any other rights or remedies available to him at law or in equity, the Vendor may –

(i) forfeit and retain for his own benefit the deposit paid by the Purchaser, and

(ii) resell the property whether by auction or by private treaty without previously tendering a conveyance to the Purchaser.

(c) If on any such re-sale contracted within one year from the date fixed for completion the Vendor incurs a loss, the Purchaser shall pay to the Vendor as liquidated damages the amount of such loss, which shall include all costs and expenses reasonably incurred in any such re-sale or any attempted re-sale, subject to the Vendor giving credit for any deposit and any money paid on account of the purchase price, but any surplus money shall be retained by the Vendor."

A vendor's obligation in a situation like this where he desires to re-sell the property is to do so within a reasonable time. What is a reasonable time depends on the circumstances of each case which will include the state of the property market then prevailing for that type of property. The vendor has a duty to mitigate damages and therefore he must not re-sell the property in a reckless manner or in bad faith, but he has no obligation to nurse the property for the benefit of a defaulting purchaser: *Keck* v. *Faber, Jellett and Keeble.*[1]

Counsel for the defendant raised the issue of the actual re-sale having been effected at the price of $550,000 when earlier on the defendant had been informed that there was a purchase for $600,000 as an indication of want of care. It is unnecessary for me to consider this and other issues relating to mitigation in this appeal. These are matters for the Registrar to consider in assessing damages.

The appeal was accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Cheng Fong & Tan; Leong Kwok Yan.*

CHANDOS PTE. LTD. v. COMPTROLLER OF INCOME TAX

[A.C.J. (Thean J.) May 7, 1987]

[Singapore – District Court Appeal No. 29 of 1985]

Revenue Law – Income tax – Execution of loan agreement and handing over of cheque outside Singapore – Employment of funds in Singapore – Interest on loan – Assessment of tax on interest – Whether interest "derived" in Singapore – Meaning of "source" of interest – Income Tax Act (Cap. 141, now Cap. 134, 1985 Ed.) ss. 10 & 12(b)(c).

Chandos Pte. Ltd., the appellants, was a company incorporated in Singapore. The objects for which Chandos was incorporated were, *inter alia*, to negotiate loans and procure capital for any company in any country and it derived its earnings from such transactions. Since its incorporation only one such transaction was made with a company called Delacom Investments Pty. Ltd. ("Delacom").

Delacom was a company incorporated in the State of New South Wales, Australia. It was not resident in Singapore but it established a branch in Singapore and was registered here as a foreign company under the provisions of the Companies Act.

On May 22, 1976, Delacom purchased an interest in certain mineral rights in Australia. On May 25, 1976 Chan-